

General Information Letter: Inclusion of payments from annuity purchased by an estate.

July 13, 1998

Dear:

This is in response to your letter dated July 2, 1998 in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding upon the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

In May of 1995 in the settlement of the late xxxxx x. xxxxxx estate, the xxxxx xxxxx xxxxxxxx of xxxxxxxx, Illinois served as the executor of the estate. The attorney for both the estate and the xxxxxx xxxxx xxxxxxxx was xxxxxxxx xxxxxxxx of xxxxxxxx, Illinois.

The Will showed an annuity was to be purchased for xxxx x. (xxxxxxx) xxxxxxx and she was to be the owner of the annuity.

A disagreement took place between xxxx and the xxxxxx xxxxx xxxxxxx and they took this matter to court. The result was the xxxxxx xxxxx xxxxxxx acquired the ownership of the annuity and this also gave them the ownership of her inheritance.

The xxxxxx xxxxx xxxxxxx has, for the last three (3) years, sent xxxx a K-1 form for the State of Illinois and a K-1 form for the IRS, which is absolutely absurd because it is their taxes that are due and payable. I have, as xxxx's husband, informed them every year that they have to pay the taxes.

The annuity is a xxxxxxxxxx annuity, Contract No. xxxxxxx and lists the xxxxxx xxxxx xxxxxxx as the owner and xxxx x. xxxxxxx as the annuitant. This is an immediate annuity and is the same as an irrevocable trust.

The owner is the party that makes the investment into the annuity and has all the rights of ownership. The owner can make himself or another person the annuitant at his own discretion. He can also guarantee the annuity for a specified period and appoint who he wants to be the beneficiary.

The owner is the one who invested his money into the annuity and the earnings from the annuity which are taxable are reported to him by the insurance company.

In this case, the xxxxxxxxxx reports the taxes to the xxxxxx xxxxx xxxxxxx using their E.I.N. and they have to legally pay the taxes.

xxxx x. xxxxxxxx invested nothing into the annuity and certainly you do not pay taxes on a zero investment.

The only way she could be held responsible for paying the taxes was if a Trust Agreement existed between her and the xxxxxxx xxxxx xxxxxxx, whereas she had agreed to pay the taxes. This, of course, never happened.

It's also true that had she put any money into the annuity, she would not be the annuitant but instead would be the owner, which she is not.

In the past, as her husband, I have discussed this four times with an Internal Revenue Service agent, three times with the legal department of the xxxxxxxxxxx Company, and with our own tax accountant. Every time, I've been told the xxxxxx xxxxx xxxxxxx must pay the taxes.

It is the contention of the xxxxxxx xxxxx xxxxxxx that since xxxx receives the monthly payments she must pay the taxes, which is absolutely ridiculous.

I am asking that you issue xxxx a statement proving the xxxxxxx xxxxx xxxxxxx must pay the taxes and you are going to require them to pay all taxes due and payable.

[xxxxxxxxxxx xxxxxxxxxxxxxx] records indicate that the application signed by xxxx xxxxxxxxxx xxxxxxx the Proposed Annuitant and xxxxxxx x. xxxxx as the Vice President and Trust Officer named xxxxxxx xxxxx xxxxxxx of xxxxxxx, as trustees of the xxxxx x. xxxxxx trust dated December xx, xxxx as amended. The ownership and control provision attached to the contract was prepared in accordance with the application naming "The xxxxxxx xxxxx xxxxxxx of xxxxxxx, as trustee of the xxxxx x. xxxxxx xxxxx dated December xx, xxxx as amended, or the successors in trust' as the owner.

The annuitant named on the annuity application and in the contract is xxxx x. xxxxxxx. The social security number we have on file for Ms. xxxxxxx is xxx-xx-xxxx. all tax forms are reported under the xxxxxx xxxxxx xxxxxxx'x EIN #xx-xxxxxxx.

xxxxxxxxxxx is in receipt of a copy of the Irrevocable Trustee Statement and Agreement as well as the Last Will and Testament of xxxxx x. xxxxxx. The Last Will and Testament of xxxxx x. xxxxxx specifically appoints The xxxxxxx xxxxx xxxxxxx of xxxxxxx, as Executor of the Will. The Will instructs the Executor to purchase a lifetime annuity with a refund provision for xxxx x. xxxxxxx, now known as xxxx x. xxxxxxx.

Neither document specifies who is responsible for the tax reporting. However, it is xxxxxxxxxxx'x understanding that taxes should be reported to the Owner of the contract. In addition, we have received confirmation from our Product Compliance area that when there is no trust agreement between the annuitant and the Trust, such as in you case, we are to report the taxes under the trust's EIN. xxxxxxxxxxx submitted the tax reporting information under the EIN of xxxxxx xxxxx xxxxxxx.

A taxpayer's Illinois net income under the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) is that portion of his "base income" allocable to Illinois pursuant to the provisions of Article 3 of the IITA (IITA §202). In the case of an individual, base income means an amount equal to the taxpayer's "adjusted gross income" as modified by certain specific statutory addition and subtraction provisions (IITA §203(a)). The term of adjusted gross income refers to the amount of adjusted gross income "properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code" (IITA §203(e)(1)). The facts stated in your letter do not indicate that any addition or subtraction modification provision would apply to the annuity payments so that they would be treated differently for Illinois and federal tax purposes.

Accordingly, the question of whether or not Ms. xxxxxxxx is subject to Illinois income tax on the annuity payments is in the first instance a question of federal income tax law. If the annuity payments are included in Ms. xxxxxxxx's federal adjusted gross income, they will be included in her base income for Illinois income tax purposes. If they are excluded from her federal adjusted gross income, they will be excluded from her Illinois base income. The question of whether the annuity payments are properly included in Ms. xxxxxxxx's federal adjusted gross income should be directed to the Internal Revenue Service, not the Illinois Department of Revenue.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.120(b).

Sincerely,

Brian L. Stocker
Staff Attorney - Income Tax